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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

JANICE LINGENFELTER,

Plaintiff and Appellant,

v.

COUNTY OF FRESNO,

Defendant and Respondent.

F060742

(Super. Ct. No. 04CECG03409)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Donald R. Franson, Jr., Judge.

Janice Lingenfelter, in pro. per., for Plaintiff and Appellant.

Kevin B. Briggs, County Counsel, Juan P. Rodriguez and Bruce B. Johnson, Jr., Deputy County Counsel, for Defendant and Respondent.

-ooOoo-

Janice Lingenfelter appeals from judgment entered after a jury returned with a verdict in favor of defendant County of Fresno (County) on her cause of action for intentional infliction of emotion distress.

We conclude that Lingenfelter has not established that the trial court committed a prejudicial error in its rulings or that the evidence required the jury to find in her favor as a matter of law.

Therefore, the judgment will be affirmed.

FACTS

Lingenfelter's son, Levi, was born in May 1986. Levi exhibited medical and developmental issues shortly after his birth, and a disagreement arose between Lingenfelter and County regarding Levi's care and treatment. County credited the diagnosis that Levi had Lowe's Syndrome, a rare defect in a single gene that can lead to blindness, kidney failure, and retardation. Lingenfelter believed Levi's medical condition was diagnosed incorrectly and that he received improper medical care.

In October 1989, County's department of social service removed Levi from Lingenfelter's custody because she refused to administer prescribed medication. In January 1990, Levi was returned to Lingenfelter's custody based on her promise to administer the medication. Within a few days after Levi's return, Lingenfelter stopped giving him the medication and, in March 1990, County took Levi back into custody.

County placed Levi in foster care and Levi's foster parents were his guardians for approximately 13 years. On September 15, 2003, Levi had a seizure that caused cardiac arrest. Levi was taken by ambulance from his foster home to Valley Children's Hospital, where hospital staff unsuccessfully attempted to revive him. Levi was pronounced dead at approximately 10:00 p.m.

County personnel notified Lingenfelter of Levi's death in person the next afternoon.

On September 17, 2003, Lingenfelter contacted a social worker and informed her that she wanted to be involved in planning Levi's funeral. By that time, Levi's foster parents had initiated funeral arrangements. The social worker contacted the foster parents and informed them of Lingenfelter's request.

Some of the disputes in this case (as demonstrated by the allegations in Lingenfelter's third cause of action described *post*) involved how Lingenfelter was treated by the foster parents, social workers, and the funeral home in connection with Levi's funeral. For example, Lingenfelter's opening brief states she made an appointment with the funeral home the Thursday after her son's death. Lingenfelter asserts that (1) she and her parents went to the funeral home for the appointment; (2) she spoke with a representative of the funeral home, David Horn, and was told she could not be involved in the funeral process because everything had been arranged; (3) she gave Horn the telephone number for a social worker, Patsy Perry, and Horn called the social worker from the funeral home; (4) Horn spoke with Perry for a few minutes and then placed her on speaker phone; and (5) while on the speaker phone, Perry was abusive towards Lingenfelter, threatening (a) to come to the funeral home with the police and have Lingenfelter arrested and (b) to post a security guard outside the funeral home at the time of the viewing to prevent Lingenfelter from seeing her son. Lingenfelter contends the social worker's treatment of her was extremely demeaning and caused her extreme agitation.

After the events at the funeral home, Lingenfelter states that she "went to the Fresno County Superior Juvenile Court, because she was unable to talk to her attorney or any officials at the court." Lingenfelter states that she spoke with an attorney who told her that because her son was deceased, the attorney would no longer be able to help her.

At the funeral, before Levi's casket was closed, stuffed animals were placed in the casket against Lingenfelter's wishes. Lingenfelter asserts that her request concerning the stuffed animals was denied in front of 30 people at the cemetery. Lingenfelter's opening brief also asserts that she "believed that the Fresno Juvenile Court System would step in to answer her requests to stop the burial of her son. She believed it so much that she waited at the cemetery until sundown for this answer or until after five p.m."

PROCEEDINGS

On January 16, 2004, Lingenfelter prepared two claim forms using preprinted forms denominated "Claim for Damages—County of Fresno." The first page of each form is stamped "Service accepted on behalf of County of Fresno only." The date January 20, 2004, and the time of 2:34 p.m. appear below the stamp. The first page of one of the forms asserts damage occurred because "[w]e were not given the rights to make decisions concerning the body of Levi Lingenfelter. [¶] He was scheduled to be buried without my consent and was buried without an autopsy." The other form asserts injury occurred when a social worker threatened Lingenfelter when she requested the date of the funeral be changed. The second page of both forms contains identical text; the only difference between the two pages is that one of them bears Lingenfelter's signature.

Lingenfelter submitted another claim form, which was dated March 30, 2004, and stamped received by County on April 5, 2004. The form listed Lingenfelter and two of her daughters as claimants and sought $2 million for Levi's death.

On June 1, 2004, County denied Lingenfelter's claims.

On November 24, 2004, Lingenfelter filed a complaint against County that contained three causes of action. The first cause of action, labeled "Negligence," alleged County's negligence caused Levi's death. The second cause of action, labeled "Negligent Infliction of Emotional Distress," alleged County negligently controlled, supervised, and directed Levi's foster care so as to cause his death and proximately caused Lingenfelter severe emotional and mental distress.

These first two causes of action are not part of this appeal. The trial court granted a motion for summary adjudication of those claims and, based on an unpublished discussion in *Lingenfelter v. County of Fresno* (2007) 154 Cal.App.4th 198, this court affirmed the summary adjudication order. (*Id*. at pp. 201 & 210.)

Lingenfelter's third cause of action was labeled "Intentional Infliction of Emotional Distress" and concerned events that occurred after Levi's death. Lingenfelter alleged that County: did not inform or notify her of Levi's passing; made funeral

arrangements and decisions independent of and without consulting her; buried Levi without her consent and without conducting an autopsy requested by her; "actively discouraged plaintiffs from attending Levi's funeral"; compelled Lingenfelter and her daughters "to occupy the back portion of the room" at the funeral home and made them feel like second-class citizens; attempted to prevent her from viewing Levi's body and berated her and her daughters "in an abusive manner" when they requested to do so; dressed Levi inappropriately in his coffin and "contrary to the way they wanted him presented"; and denied Lingenfelter's request that Levi's burial plot be located "near that portion in the cemetery near his other family members."

In *Lingenfelter v. County of Fresno*, *supra*, 154 Cal.App.4th 198, we vacated an order granting nonsuit on Lingenfelter's third cause of action, stating:

> "Generally, individuals have the right to be free from outrageous conduct by others that is undertaken with the intention of causing, or with reckless disregard of the probability of causing, emotional distress. Contrary to the trial court's holding, plaintiff's right and defendant's corresponding duty not to intentionally inflict emotional distress was not dependent on plaintiff's status as her son's legal guardian." (*Id*. at p. 201.)

As a result of our 2007 disposition of Lingenfelter's appeal, Lingenfelter's cause of action for intentional infliction of emotional distress was returned to the superior court and scheduled for a jury trial.

On April 30, 2010, when the trial readiness hearing was held, Lingenfelter was represented by counsel. On May 3, 2010, the trial began with the parties and court addressing various procedural matters and completing jury selection. The next two days, Lingenfelter presented her case. On May 6, 2010, County presented its witnesses.

On Monday, May 10, 2010, counsel presented their closing arguments to the jury, the trial court read the final jury instructions, and the jury began its deliberations at 2:52 p.m. Later that day, the jury agreed upon a verdict. The first question in the verdict form asked: "Was the County of Fresno's conduct outrageous?" The jury answered, "No" and, in accordance with the instructions, answered no further questions.

After the trial, County submitted a memorandum of costs dated May 26, 2010, that requested costs in the amount of $2,061.08.

On July 6, 2010, Lingenfelter filed an amended notice of appeal from the judgment after jury trial and County's memorandum of costs dated May 26, 2010.

DISCUSSION

I. Standards for Self-representing Litigants

County's brief contends that even though Lingenfelter is not represented by an attorney in this appeal, her status as a self-representing litigant in no way exempts her from the rules governing appeals. In view of this contention, we will set forth the well-established rules of law regarding the standards that apply to self-representing litigants.

Self-representing litigants are subject to the standards generally applied by California courts in civil litigation. (*Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284-1285 [self-representing litigants not exempt from statutes or court rules governing procedure].) The United States Supreme Court has interpreted the federal due process clause to reach the same result: "[W]e have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel." (*McNeil v. United States* (1993) 508 U.S. 106, 113 [in ordinary civil litigation, federal procedural rules not interpreted more leniently for parties who proceed without counsel].)

The same approach applies in the Courts of Appeal. We treat self-representing litigants like any other party and, therefore, they are subject to the same rules of appellate procedure as parties represented by an attorney. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247 [appellant representing self on appeal must follow correct rules of procedure].) Accordingly, the general principle of appellate practice that an "'order of the lower court is *presumed correct*'" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564) applies in this case. Under this general principle, an appellant, whether represented by an attorney or not, will not win on appeal unless he or she affirmatively shows an error occurred. (*Ibid*.)

II. Sufficiency of the Evidence to Support the Jury's Verdict

A. Contentions

Lingenfelter challenges the jury's finding that County's conduct was not outrageous by asserting that her parents testified at the trial regarding the conversation that occurred between Lingenfelter and the social worker over a speaker phone while Lingenfelter was at the funeral home. Lingenfelter asserts her parents' testimony was unrehearsed and "they did state the incident and the tone of this incident." Lingenfelter also asserts that "Perry has denied this incident in her testimony and her records do not show a report of this call. This egregious treatment toward [Lingenfelter] was proven, through these witnesses show 'more likely than not', did exist."

B. Legal Principles

When a plaintiff with the burden of proof on an issue is challenging a jury's finding in favor of the defendant, the issue on appeal concerns the failure of the plaintiff's proof at trial. In such a situation, the appellate court must decide whether the evidence compels a finding in favor of the plaintiff as a matter of law. (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 279.) "Specifically, the question becomes whether the appellant's evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.' [Citation.]" (*Ibid*.)

A related principle of appellate law is that the party challenging the judgment has the burden of showing reversible error, which requires an adequate record. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) In *Ballard*, the plaintiff failed to include a transcript of the portion of the trial relating to the issue of damages. The court concluded that the plaintiff failed to present an adequate record to show reversible error and upheld the judgment. (*Id*. at p. 575.)

C. Analysis

In this appeal, Lingenfelter failed to include a transcript of all the testimony concerning the conduct of County's employees and whether that conduct was outrageous.

Pursuant to the rule of law set forth in *Ballard v. Uribe*, *supra*, 41 Cal.3d 564, we must presume that those portions of the transcript that were not provided for our review contain evidence that contradicts and impeaches Lingenfelter's evidence and, thus, supports the verdict. (See *EnPalm, LLC v. Teitler* (2008) 162 Cal.App.4th 770, 775 [appellate court had no way to evaluate merits of contention when appellate record did not include trial proceedings].) As a result of Lingenfelter's omission, we must conclude that she failed to meet the standard for reversal set forth in *Shaw v. County of Santa Cruz*, *supra*, 170 Cal.App.4th at page 279—that her evidence was uncontradicted, unimpeached, and of such character and weight as to require a finding that County's conduct was outrageous.

Furthermore, Lingenfelter's own brief concedes that Perry denied the speaker phone incident. The applicable rules of law require us to presume the jury believed Perry's testimony and rejected Lingenfelter's version of events. (See Evid. Code, § 411 [direct evidence of a single witness]; *In re Marriage of Mix* (1975) 14 Cal.3d 604, 614 [testimony of a single witness constitutes substantial evidence].) In short, Lingenfelter has not affirmatively shown that the jury was required, as a matter of law, to find Perry's testimony was not credible.

Therefore, we conclude that Lingenfelter has failed to carry her burden on appeal and demonstrate that the evidence compelled the jury to find in her favor as a matter of law. (See *Shaw v. County of Santa Cruz*, *supra*, 170 Cal.App.4th at p, 279.)

D. Incomplete Appellate Record

In her reply brief, Lingenfelter "contends that Fresno County and the State of California have the resources to designate the record and [she] believes has had the record transcribed in entirety." Lingenfelter also asserts that she requested a waiver of fees for the reporter's transcript to be transcribed, but her request was denied.

These statements by Lingenfelter do not include the argument that the denial of her request for a waiver of the transcription fees constituted reversible error. Therefore, if she is attempting to raise that point as a basis for reversal, she has not complied with

the requirements of California Rules of Court, rule 8.204, which requires briefs to state each point in a separate heading, support the point by argument and, if possible, authority. As a result, we will not discuss the point further. (See *Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647 [reviewing court need not discuss point merely asserted by appellant without argument or authority].)

III. Jury Instructions

A. Outrageous Conduct

Lingenfelter's opening brief, under the heading "Jury Instructions," asked whether it was "necessary for this civil injustice to be *outrageous* for compensation and damages?"

By the time this case reached the jury, the only remaining cause of action was the claim for intentional infliction of emotional distress. It is well established California law that one of the elements of intentional infliction of emotional distress is outrageous conduct. (*Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 209.) Thus, the answer to Lingenfelter's question is: Yes, it was necessary for her to prove outrageous conduct to be entitled to recover damages on her sole remaining claim.

Lingenfelter's question might be intended to imply that the trial court committed error by not allowing her to present other claims to the jury. That argument, if intended, cannot be accepted at this late stage of the proceedings. Lingenfelter's pleadings and our 2007 decision regarding her claims determined the claim she was allowed to pursue on remand. Her claims for negligence and negligent infliction of emotional distress were eliminated by the summary adjudication order, which we affirmed. (*Lingenfelter v. County of Fresno*, *supra*, 154 Cal.App.4th at pp. 201 & 210.) The trial court's handling of the trial was consistent with Lingenfelter's pleadings and our earlier decision. Therefore, we conclude the trial court did not commit error by failing to allow Lingenfelter to present other claims to the jury.

B. Instructions Given

Lingenfelter's opening brief asserts that she "believes not all these elements [of intentional infliction of emotional distress], were included in the jury instructions given to her jury."

The appellate record contradicts Lingenfelter's belief. Page 512 of the clerk's transcript shows that CACI No. 1600, labeled "Intentional Infliction of Emotional Distress—Essential Factual Elements" was proposed by Lingenfelter and given as requested.

Therefore, we conclude that the jury was properly instructed on the elements of a claim for intentional infliction of emotional distress.

C. CACI No. 1620

Lingenfelter also appears to contend that the jury should have been instructed using CACI No. 1620, which is labeled "Negligent Infliction of Emotional Distress—Direct Victim—Essential Factual Elements."

As stated earlier, Lingenfelter's claim for negligent infliction of emotional distress (the second cause of action in her complaint) was resolved by an order granting County summary adjudication of that claim. This court affirmed that summary adjudication order. (*Lingenfelter v. County of Fresno*, *supra*, 154 Cal.App.4th at pp. 201 & 210.) Therefore, the trial court did not err in failing to instruct the jury on a theory that had been eliminated from this lawsuit in earlier proceedings.

D. Vague Instruction and Emotional Distress from Levi's Dependency

Lingenfelter's opening brief asserts that the "jury instructions were vague and [she] was unable to mention the emotional distress suffered during the thirteen unendurable years of her son's dependency to Fresno County."

The reason that Lingenfelter was not able to mention the distress suffered during her son's dependency was that she did not claim this distress as an injury in timely filed claim forms. As discussed in an unpublished portion of our opinion in *Lingenfelter v. County of Fresno*, *supra*, 154 Cal.App.4th 198, her claim form dated March 30, 2004,

was untimely and she cannot pursue the claims set forth in that form. Rather, she is limited to the matters raised in her forms dated January 14, 2004, and neither of those forms included the injury of emotional distress during the 13 years of Levi's dependency.

Therefore, the trial court did not err by failing to provide instructions concerning the emotional distress Lingenfelter alleges she experienced during her son's dependency.

IV. Health and Safety Code Section 7100

A. Background

The care and disposition of dead human bodies is a matter that affects the public health and safety. (23 Cal.Jur.3d (2012) Dead Bodies, § 1.) Consequently, the state has the power to regulate these matters under its police power. (*Ibid*.) In an exercise of its police power, the California Legislature enacted Health and Safety Code section 7100, which identifies who has the right to control the disposition of the remains of a deceased person along with the corresponding duty of disposition and liability for the reasonable cost of disposition. Health and Safety Code section 7100 provides in part:

> "(a) The right to control the disposition of the remains of a deceased person, the location and conditions of interment, and arrangements for funeral goods and services to be provided, unless other directions have been given by the decedent pursuant to Section 7100.1, vests in, and the duty of disposition and the liability for the reasonable cost of disposition of the remains devolves upon, the following in the order named:
>
> "(1) An agent under a power of attorney …. [¶] … [¶]
>
> "(2) The competent surviving spouse.
>
> "(3) The [surviving children].
>
> "(4) The surviving competent parent or parents of the decedent. If one of the surviving competent parents is absent, the remaining competent parent shall be vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving competent parent.
>
> "(5) The [surviving siblings]…."

B. Parties' Motions

Lingenfelter's motion in limine No. 6 was a motion to adjudicate the issue of liability of the County based on violation of Health and Safety Code section 7100. Lingenfelter's motion asserted that, under Health and Safety Code section 7100, she had the legal right to control the funeral, she attempted to do so, and her right was violated by County's interference. Her motion requested that she be allowed "to put on evidence that the County interfered with her right to arrange the burial of Levi …."

County's motion in limine No. 3 sought to limit references to Lingenfelter having the right to control Levi's remains unless and until the trial court ruled on the issue as a matter of law. County requested "an order precluding all parties, attorneys, lay or expert witnesses, from stating, implying or insinuating that California law required that [Lingenfelter] have control of Levi Lingenfelter's remains" until the court ruled on the issue.

The May 3, 2010, minutes from the first day of the trial lists the parties' motions in limine. The language immediately after the entries for County's motion in limine No. 3 and Lingenfelter's motion in limine No. 6 is the same: "Court rules as fully stated on the record." The partial reporter's transcript of the trial in the appellate record does not cover the proceedings of May 3, 2010. Therefore, the trial court's ruling is not part of the record on appeal.

On May 7, 2010, the trial court issued a written order that addressed Health and Safety Code section 7100:

> "The court also concludes that any jury instruction regarding the legal right to control funeral arrangements by [Lingenfelter] would be irrelevant and misleading in this trial, since any county employee who made any such statement or act, which may have mistakenly directed control over the funeral arrangements to the legal guardian, is immune from liability for any such acts, if exercising due care. (Govt Code §§ 818.8, 815.2(b), and 820.4. The court finds that if a county employee made any such statements during the relevant time period, they were made pursuant to County procedures in place in 2003 and were not knowingly made in violation of any statute as interpreted by the courts before that time. Any such

statements or acts are therefore not actionable against the County of Fresno."

C. Private Right of Action

Lingenfelter's motion in limine No. 6 suggests that persons upon whom the right of disposition devolves have a private right of action if that right is infringed—that is, a right to sue for monetary damages if the statutory rights are violated. The trial court's ruling, among other things, rejects the suggestion that a private right of action exists.

On appeal, Lingenfelter has not argued that she has a private right of action for the alleged violation of rights provided to her under Health and Safety Code section 7100. As a result, Lingenfelter has not set forth the three-part test for implying a private right of action for the violation of substantive statutory rights. That test provides that a court may imply a private right of action if "(1) the plaintiff belongs to the class of persons the statute is intended to protect, (2) a private remedy will appropriately further the purpose of the legislation; and (3) such a remedy appears to be needed to assure the effectiveness of the statute." (1A Cal.Jur.3d (2012) Actions, § 51.)

Because Lingenfelter has not argued that these three conditions exist or otherwise claimed that she has a private right of action under Health and Safety Code section 7100, we will not consider the issue further. (See *Atchley v. City of Fresno*, *supra*, 151 Cal.App.3d at p. 647 [reviewing court need not discuss point asserted without argument or authority].) We have mentioned it here as background for the discussion that follows.

D. Claim of Error

Lingenfelter's opening brief asserts that the jury was not given information about the duty of the government under Health and Safety Code section 7100, either in a jury instruction or by allowing the attorneys to mention the statutory right during the trial.

County asserts that the trial court applied Evidence Code section 352 in deciding to preclude the introduction of Health and Safety Code section 7100 evidence and that decision does not constitute an abuse of discretion. Evidence Code section 352 provides in full:

> "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

A trial court has broad discretion in determining whether to admit or exclude evidence under Evidence Code section 352. (*People v. Ramos* (1997) 15 Cal.4th 1133, 1170.) When a matter is left to the trial court's discretion, appellate courts apply the abuse of discretion standard of review. If there is a reasonable justification under the law for the trial court's decision, there is no abuse of discretion. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 957.) In other words, reversal is warranted only if, when the circumstances of the case are viewed most favorably in support of the trial court's decision, the decision exceeds the bounds of reason. The appellant bears the burden of showing the trial court abused its discretion. (*Ibid.*)

We conclude that Lingenfelter has not carried her burden of showing that the trial court exceeded the bounds of reason when it precluded the parties from mentioning Health and Safety Code section 7100 because references to that statute may have misled the jury in analyzing the intent of County employees who operated under policies and procedures that might have been inconsistent with Health and Safety Code section 7100.

V. Costs

County contends that Lingenfelter cannot challenge the award of costs in the trial court because of various procedural defects.

Because Lingenfelter's briefs do not set forth any arguments as to why the award of costs was in error, we will not address the issue of costs in this opinion.

VI. Other Points

It is possible to interpret Lingenfelter's brief as raising other points. Those points, such as DNA testing, paternity testing, and the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) were not before the trial court as part of the intentional infliction of emotional distress claim. Accordingly, we need not address those other points in detail.

DISPOSITION

The judgment is affirmed. County shall recover its costs on appeal.

_____
DAWSON, J.

WE CONCUR:

_____
LEVY, Acting P.J.

_____
CORNELL, J.